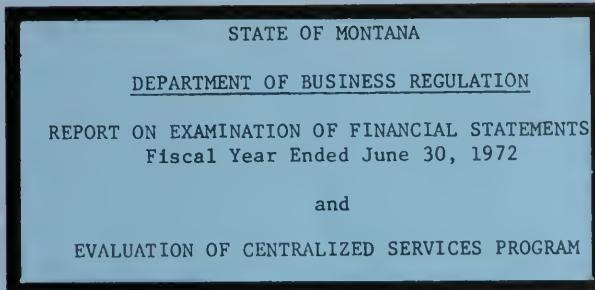


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STATE OF MONTANA

DEPARTMENT OF BUSINESS REGULATION

REPORT ON EXAMINATION OF FINANCIAL STATEMENTS
Fiscal Year Ended June 30, 1972

and

EVALUATION OF CENTRALIZED SERVICES PROGRAM



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PRINCIPAL ADMINISTRATIVE OFFICERS

DEPARTMENT OF BUSINESS REGULATION

Harold H. Pitts, Director January 1973 to Present

John A. Dowdall, Director November 15, 1971 to January 1973

Isabelle Pistelak, Administrator
Centralized Services Division July 1973 to Present

Dick M. Disney, Administrator
Centralized Services Division November 15, 1971 to July 1973

SUMMARY OF RECOMMENDATIONS

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Charge costs of operating the Centralized Services Division to one appropriation and distribute to other financing sources on the basis of services provided.	6
Seek adjustment of the office space lease to recognize the lower square footage occupied.	7
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Consult with the State Department of Administration to establish a system of employee travel advances.	9
Discontinue the practice of advancing vacation and sick leave and adhere to the statutory provisions relating to completion of qualifying employment periods.	11
Correct leave records by eliminating sick leave earned prior to earlier termination from state employment.	11
The Department of Administration prescribe procedures for the granting and documentation of authorized leaves of absence.	11
Revise responsibilities for payroll preparation, processing, and distribution to result in adequate separation of duties.	13
Establish a departmentwide uniform system to accurately depict time worked and leave taken by employees.	14
The Department of Administration prescribe guidance and procedures for use by state agencies in the area of time and attendance documentation.	14
Determine the number of travel purchase orders necessary to fulfill current needs.	15
Return travel purchase orders in excess of current needs to the Department of Administration.	15
Place the responsibility and custody over travel purchase orders with one employee.	15
Establish a centralized property accountability system consistent with the property management practices prescribed by Management Memo 70-17.	16

SUMMARY OF RECOMMENDATIONS (Continued)

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Develop a centralized accounts receivable system providing for:	
a. Separation of duties within the Centralized Services Division.	
b. Utilization of the statewide budgeting and accounting system for control and subsidiary accounts.	
c. Followup of past due accounts on a timely basis.	17
Implement a system of internal control over cash collections consistent with the guidelines set forth in the Montana Administrative Manual.	19
Seek legal clarification of conflicting statutes governing the disposition of revenue derived from licensing and enforcement activities.	20
Deposit the bank assets administered by the department as trustee in the state treasury and account for the assets through the statewide budgeting and accounting system.	21



STATE OF MONTANA
Office of the Legislative Auditor
STATE CAPITOL
HELENA, MONTANA 59601

The Legislative Audit Committee
of the Montana State Legislature:

We have examined the balance sheet of the Montana State Department of Business Regulation as of June 30, 1972, and the related statements of operations as set forth in the table of contents in this report, for the year then ended. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The financial statements have been prepared on a modified accrual basis of accounting and accordingly present the financial position in accordance with generally accepted accounting principles applicable to governmental units. Prior to 1971-72, the state used the cash basis of accounting for state operations.

The department has not maintained accounts for accounts receivable or fixed assets. Accounts receivable determined from informal records maintained by the department were in excess of \$9,700 in February 1973. Department records are not maintained in such a manner as to estimate the value of fixed assets. Because of the absence of accounting for these two items, the department's balance sheet does not reflect amounts due for services rendered or the investment in fixed assets at June 30, 1972.

In our opinion, the accompanying financial statements, except for the balance sheet for accounts receivable and fixed assets, present fairly the financial position of the State Department of Business Regulation as of June 30, 1972, and the results of its operations for the year then ended, in conformity with generally accepted governmental accounting principles.

We submit the financial statements listed in the table of contents together with the following comments. In addition, the full text of the replies of the Departments of Business Regulation and Administration are included following the financial statements.

COMMENTS

GENERAL

The Department of Business Regulation was created by the Executive Reorganization Act of 1971 to administer the affairs of selected state organizations responsible for the regulation of certain business activities. The department was formally established on November 15, 1971, through Executive Reorganization Order 7-71. Formation of the department resulted in the consolidation of regulatory activities which were previously performed by independent agencies or associated with other agencies. These activities include (1) the licensing and regulation of weighing and measure devices formerly performed by the State Department of Agriculture; (2) enforcement of the Unfair Practices Act formerly affiliated with the Board of Food Distributors; (3) the setting and enforcement of minimum milk prices formerly the responsibility of an independent Milk Control Board; and (4) the examination and supervision of financial institutions such as state banks and savings and loan associations, formerly the responsibility of the State Examiner.

Initially the responsibility for examining the financial activities of school districts, counties, cities and other political subdivisions was also the responsibility of the department until September 1972, at which time the responsibility for these examinations was transferred by Executive Reorganization Order 4-72 to the newly formed Department of Intergovernmental Relations. This function was also formerly the responsibility of the State Examiner.

As a result of executive reorganization, the department is comprised of five divisions: Weights and Measures Division, Financial Division, Trade Regulation Division, Milk Control Division, and the Centralized Services Division. All but the Centralized Services Division are engaged in regulatory activities in their respective areas, whereas the Centralized Services Division performs the fiscal and administrative functions of the department. At June 30, 1973, the department employed 43 personnel.

The activities of the department are financed from several sources, as illustrated by the following table which depicts the source of 1971-72 expenditures:

General Fund	\$650,905
Earmarked Revenue	138,294
Revolving Fund	6,494
Federal Grants	16,925
Other	<u>17,556</u>
Total	<u>\$830,174</u>

Our examination and the comments which follow pertain primarily to the operations of the Centralized Services Division in the area of fiscal controls and accounting system controls and adherence to state laws governing state expenditures.

DISTRIBUTION OF ADMINISTRATIVE COSTS

As shown by Exhibit "D" on page 26, the department's programs are financed from several sources, including the General Fund and earmarked revenues. When such multiple sources of financing exist, an equitable distribution of program costs is especially important to insure that each source of financing provides its proper share of support. Costs directly attributable to a program are ordinarily charged to the correct program. However, agency officials must develop equitable methods to distribute indirect costs, such as those of the various state agencies' centralized services programs. This involves determining how each program operation benefits from the administrative services.

Upon formation of the Department of Business Regulation, the Centralized Services Division was created to perform selected administrative activities for the new department. Since financing for the original regulatory functions

had been established prior to reorganization without consideration of the Centralized Services Division, financing for the division was internally provided by assessments to the four regulatory divisions via budget amendments.

Initially the proposed assessments were computed in proportion to the number of employees in each division. This is one method that tends to equitably distribute the costs to the benefiting program. However, this method was not used to make the cost distribution because of expressed concern by some division heads that their programs were not adequately financed to pay the proposed assessments. Instead, the cost of Centralized Services Division operations was assessed on an estimated ability to pay basis. This was later revised at year-end, using another arbitrary basis, to return unused amounts to the accounts of the regulatory divisions. The schedule below shows relative differences between the original computation and the actual cost distribution.

Division	Assessment Based on No. of Employees	Actual Expenditures	Difference
Financial	\$27,217	\$14,924	\$12,293
Weights & Measures	7,351	8,173	(822)
Milk Control	4,410	10,576	(6,166)
Trade Regulation	755	1,376	(621)
Total	<u>\$39,733</u>	<u>\$35,049</u>	<u>\$ 4,684</u>

The schedule shows that the arbitrary assessment made was significantly different from that based upon a standard criteria, such as number of employees. As a result, the milk control and trade regulation programs, which are financed entirely from earmarked revenues, were overcharged at least \$6,787. The department subsequently revised its assessment practices in 1972-73 to consider the number of employees. However, the result for 1971-72 illustrates

the need for uniform and consistent application of pertinent criteria to insure that costs are properly and equitably distributed.

The accounting procedures used to allocate the administrative costs to the various programs are cumbersome. During 1971-72, Centralized Services Division costs were paid from the general fund appropriation until it was depleted, at which time the costs were charged to the earmarked revenue appropriations. During 1972-73, salaries and related personnel benefits were charged directly to the general fund appropriation, while rental costs were charged directly to one earmarked revenue appropriation, and all other operating costs to the other earmarked revenue appropriation. The director advised us that these procedures were based upon advice of the State Budget Bureau in prior years. A better method would be to charge Centralized Services Division expenditures to a single appropriation and periodically reimburse that appropriation by transfer through the use of accounting documents. We recently discussed such a procedure with the state budget director and he agreed that it would provide a more accurate disclosure of expenditures and result in timely assessment of appropriate financing sources.

RECOMMENDATION

We recommend that the costs of operating the Centralized Services Division be initially charged to one appropriation and distributed to other financing sources on the basis of services provided.

OFFICE RENT

Payments for rent of the department's office space in Helena are in accordance with the rental contract; however, the actual space occupied by the department is about 150 square feet less than the 4,553 square feet called for by the lease. Examination of blueprints and floor plans

for the building shows that the department was charged for an entry way and hallway which provides access to offices used by another organization. Discussion with the lessor confirmed that an error was made in calculating the square footage and that an adjustment should be made. Approximately \$600 was involved for 1971-72.

RECOMMENDATION

We recommend that the department seek adjustment of the office space lease to recognize the lower square footage occupied.

TRAVEL EXPENDITURES

The department spent about \$159,000 in 1971-72 for travel. We observed that employees and approving officials are not adequately familiar with provisions of travel pay statutes, the Centralized Services Division does not review travel vouchers for accuracy and propriety, and the department does not provide travel advances to employees. These conditions resulted in inadequate preparation of travel claims, numerous erroneous payments, and a high frequency of travel claim submissions.

Preparation of Employee Travel Claims

Our examination of travel claims disclosed many errors which resulted in both overpayment and underpayment of travel expenditures permitted by statutes. The errors noted were use of incorrect per diem rates, incorrect calculation of quarters for the per diem computation, and claims for items not allowed by statute. In numerous instances, claims were paid where employees submitted travel claims without showing the time of departure and arrival. Such inadequately prepared claims preclude a determination of the propriety of amounts. The administrator of the Centralized Services Division advised us that claims are not audited by his personnel and that

claims transmitted to his division from other divisions are not questioned but are considered to be proper and correct.

Although claims submitted by agencies are subject to limited pre-audit by the State Department of Administration, the primary responsibility for claim propriety and accuracy is at the agency level. This is evident from the standpoint that a certification is required at the bottom of the travel claim form. Agencies must have procedures to insure that claims are proper and accurate. In the case of travel claims, it is essential that the claims be examined for propriety and accuracy in much the same manner as those for services obtained from commercial services. This is a logical function for the Centralized Services Division.

RECOMMENDATION

We recommend that the department establish review procedures within the Centralized Services Division to insure that travel claims are accurate, complete, and in accordance with state laws and regulations.

Travel Advances

The department requires employees to pay travel expenses from their personal resources. The employees are reimbursed only after they have submitted claims supporting the travel costs incurred. We noted that for some individuals whose duties require that they travel extensively, the monthly travel costs frequently exceed \$400. Because of this policy, some employees who incur substantial travel expenses must borrow money before traveling or charge all travel costs and pay the charges after reimbursement.

Employees also submit travel claims more frequently than if travel advances were made available to finance official travel because of this practice. We noted where employees of one division submit weekly claims,

while employees of another division who travel extensively submit semi-monthly claims to alleviate the lack of travel advances. One division administrator advised us that he uses this travel situation as a test to determine his employees' capability of managing their personal financial affairs, and thus whether the employees should be retained.

It is not in the best interest of the state to require employees to finance official state travel. Two methods are currently available for making travel advances, i.e., contingent revolving fund account or the "expense advance to employees" account provided in the statewide budgeting and accounting system. We believe the Department of Business Regulation should consult with the Department of Administration to establish a system of travel advances for employees who travel extensively. Use of such a system would substantially reduce time required for preparation, processing, and payment of travel claims.

RECOMMENDATION

We recommend that the department consult with the State Department of Administration to establish a system of employee travel advances.

ADMINISTRATION OF VACATION AND SICK LEAVE

The department has not administered vacation and sick leave benefits according to provisions of state statutes and departmental regulations. This has resulted in granting vacation and sick leave prior to completion of qualifying employment periods, advancing vacation and sick leave credit which resulted in overpayment to an employee who terminated prior to accrual of the advanced leave, and restoring sick leave earned during a prior period of state employment.

Our examination of leave records showed that employees have been granted leave prior to completion of required employment periods. One employee was

permitted 11 days sick leave with full pay during the first 90 days of employment and was advanced an additional seven days sick leave during the following three months. The employee was also allowed eight days vacation leave during the six-month period, although he was not entitled to any until completion of 12 months continuous employment. The uniform sick leave law (Section 59-1008, R.C.M. 1947) provides that employees shall be granted sick leave with full pay only after being continuously employed for 90 days. The vacation leave law (Section 59-1001, R.C.M. 1947) provides that vacation leave with full pay may be taken only after completion of 12 months continuous employment. This employee terminated after less than six months' employment. The granting of unearned leave resulted in an unrecovered overpayment of \$508.

Department officials advised us that as a general rule sick or vacation leave has been granted with pay even though the qualifying periods have not been completed. There are no provisions for this practice in the existing statutes.

We also noted during our examination of leave records where one employee had 528 hours sick leave worth \$3,553 credited to him on July 1, 1971, the date of his re-employment with the state after terminating three years earlier. The minutes of the employing board indicate the employee was granted a one year leave of absence, although the actual period of absence was over three years. Both the employee and a former executive secretary of the employing board stated that it was understood that the entire period of absence was authorized as a leave of absence and that the employee intended to return to work for the board. This conflicts with the fact the employee had withdrawn his accumulated retirement benefits at which time he certified that his termination was complete and final.

The date of re-employment was the day the uniform sick leave law became effective. Subsequent to re-employment, this employee took 83 hours of sick leave in January 1972. Had 528 hours of sick leave not been restored six months earlier, the employee would have exceeded his accrued sick leave by 35 hours. Consequently, the employee would have been advanced 35 hours of sick leave worth \$236.

Insofar as we could determine, there is no legal basis for reinstatement of unused sick leave accrued during prior state employment. We also could not find any statutory authority or administrative guidance with respect to the granting and duration of leaves of absence. Since many agencies undoubtedly encounter situations where leaves of absence are necessary and warranted, uniform procedures should be established to govern and document authorized leaves of absence. In this connection, the director of the Department of Administration recently advised us that some consideration has been given to the need for guidance over leaves of absence.

RECOMMENDATION

We recommend that:

1. *The department discontinue the practice of advancing vacation and sick leave and adhere to the statutory provisions relating to completion of qualifying employment periods.*
2. *The department correct leave records by eliminating sick leave earned prior to earlier termination from state employment.*
3. *The Department of Administration prescribe procedures for the granting and documentation of authorized leaves of absence.*

INTERNAL CONTROL

Internal control exercised by the department is ineffective in many instances. We noted that internal control weaknesses were prevalent in the area of payroll processing, preparation of time and attendance reports, travel purchase orders, fixed assets, accounts receivable, and cash handling.

Prior to executive reorganization, the establishment of effective internal controls was the responsibility of the individual agencies. Since executive reorganization and the establishment of central administrative functions, such as the Centralized Services Division, the responsibility for effective internal controls has been concentrated. Consequently, the Centralized Services Division should insure that internal controls are adequate.

A primary consideration in establishing satisfactory internal controls is the separation of duties between the physical control of assets, the initiation of documents which ultimately result in recordings in accounting records, and the actual recording of accounting transactions. Such a separation of duties will create a system of checks and balances which will effectively preclude unauthorized use of the state assets.

Payroll Processing

Duties for preparing and processing the payroll and distributing the payroll warrants are not separated. The entire payroll process is normally accomplished by one individual who:

1. Prepares employment/termination documents,
2. Prepares salary adjustment documents,
3. Reviews time and attendance reports and prepares changes to payroll listings, and
4. Receives and distributes payroll warrants.

At a minimum, the payroll warrants should be received and distributed by someone other than the employee who prepares and approves the payroll documents.

RECOMMENDATION

We recommend that the department revise responsibilities for payroll preparation, processing, and distribution to result in adequate separation of duties.

Time and Attendance Records

The system of reporting time and attendance is not uniform between divisions. This has resulted in errors of recording and does not provide assurance that the leave is administered in accordance with the applicable statutes and regulations.

Time and attendance procedures vary among the divisions. In some instances daily time reports are used, while in other instances other procedures are used, such as positive monthly time report, monthly time reports by exception (showing only time off), and no reporting at all. In addition, we were advised that such records are unnecessary in certain cases (administrators) because they are expected to work many hours overtime and end up with more time to be taken off than actually taken. In another instance, time and attendance records for an individual showed he was on duty while he was actually performing as a consultant in another state. This individual was paid a total of 166 hours (worth \$1,117) over an eight-month period, while working for the Milk Stabilization Board in North Dakota. The individual advised us that his employment agreement with the Montana Milk Control Board permitted him to serve as a consultant until a replacement could be obtained in North Dakota. He commented that he had worked more than enough overtime to offset the time paid while in North Dakota. In this case, the time and attendance records do not show any overtime worked; however, board minutes show that the individual worked Saturdays on occasions when the Montana Milk Control Board meets. The individual explained that he kept

no records of overtime because he understood that his position was exempt. Personnel involved in the hiring of the individual expressed general agreement with the assertions made by the individual regarding the employment arrangement.

Accurately completed time and attendance records document the basis for salary payments. In addition, state law provides for the accrual of vacation and sick leave by all state employees on the basis of time worked, i.e., so much leave for each month of work. In order to facilitate the computation of leave and demonstrate entitlement, time and attendance records are necessary. Consequently, time and attendance records depicting hours and days worked should be maintained for most employees as a standard procedure in all state agencies.

We recognize that certain employees, such as those in executive positions, perform numerous and varied tasks which may be difficult to express in the form of time and attendance records. Because of this, and the fact that the requirement for adequate records applies to all departments and agencies, we believe the Department of Administration should prescribe guidance and procedures governing the level at which time and attendance recordkeeping is necessary and the type of data which is necessary to document time and attendance for employees.

RECOMMENDATION

We recommend that:

1. *The department establish a department-wide uniform system to accurately depict time worked and leave taken by its employees.*
2. *The Department of Administration prescribe guidance and procedures for use by state agencies in the area of time and attendance documentation.*

Travel Purchase Orders

Travel purchase orders are used by state agencies as payment for travel on common carriers within the state and on occasion are accepted outside the state. We found that the department has an excessive number of travel purchase orders and has not exercised necessary control to assure that they are properly protected against unauthorized use.

The Department of Administration made a concerted effort in July 1972, to reduce the quantity of travel purchase orders under the control of various state agencies and issued new booklets. The Department of Business Regulation requested and received seven booklets containing 140 travel purchase orders. Considering current usage of these travel purchase orders, we found that the department had approximately a nine-year supply on hand. A number of booklets assigned to certain employees had not been used at all. The booklets are not controlled by placement in a locked safe, but rather are retained by various employees in unlocked desk drawers.

Inasmuch as these documents can be substituted for cash in obtaining transportation services, the quantity should be limited to only reasonable needs and those on hand should be controlled by one employee in the same manner as cash.

RECOMMENDATION

We recommend that the department:

1. *Determine the number of travel purchase orders necessary to fulfill current needs.*
2. *Return travel purchase orders in excess of current needs to the Department of Administration.*
3. *Place the responsibility and custody over travel purchase orders with one employee.*

Fixed Assets

The department does not have a centralized inventory control system for the fixed assets being used. Assets have not been properly valued, periodic physical inventories have not been taken, and additions, deletions, and transfers have not been properly recognized in existing records. Listings of equipment are maintained by individual operating divisions with varying degrees of formality. These do not comply with guidelines for property management prescribed by the Department of Administration Management Memo 70-17.

The accountability for fixed assets is properly a responsibility of the accounting function and should be such that an independent review of the physical custodians is automatically accomplished by the system. Such an independent check is essential to assure that fixed assets are utilized properly.

RECOMMENDATION

We recommend that the department establish a centralized property accountability system consistent with the property management practices prescribed by Management Memo 70-17.

Accounts Receivable

Considerable amounts of cash are generated by the operating divisions through an advance notice or billing method, particularly in the area of milk control, weights and measures regulation, and bank examinations. Evaluation of the accountability process for these receipts shows that the billing and collection process is decentralized among the divisions without an accounting control for recording accounts receivable.

A double entry system of accounts receivable with control and subsidiary accounts provides a check system to assure followup of old accounts

and a control to assure that receipts are properly channeled. The statewide budgeting and accounting system has been developed to enable mechanical processing of accounts receivable. Proper internal control dictates that this function be handled by a person other than those responsible for billing and collecting to provide independent contact with those being charged. Through this procedure, any unauthorized use of moneys paid, but not recorded and deposited in the state treasury, can be detected through followup collection action.

RECOMMENDATION

We recommend that the department develop a centralized accounts receivable system providing for:

- a. *Separation of duties within the Central Services Division.*
- b. *Utilization of the statewide budgeting and accounting system for control and subsidiary accounts.*
- c. *Followup of past due accounts on a timely basis.*

Control of Cash Receipts

Each division within the department handles cash receipts. Several of the procedures are contrary to internal control rules. Questionable procedures relate to separation of duties, endorsement of checks, deposit of receipts, and access to the safe where receipts are stored.

Cash and checks received in the mail are routed to the division which generated the revenue. No record is made of these receipts prior to routing and there is no independent recording of accounts receivable when a bill is issued. Upon receipt of the cash and related documents, the various divisions identify the nature of the revenue, and forward it to the Centralized Services Division or place it in the safe. Each division's routing process differs; all are in violation of good internal control procedures and that prescribed

in the Montana Administrative Manual, Chapter 2-1200. Proper internal control requires as a minimum that the function of recordkeeping and physical control of cash should be separated. Personnel responsible for recording cash payments in the formal accounting records should not have access to collections. Personnel responsible for billing should not handle receipts when they are remitted. Collections should be recorded on a daily basis indicating the total amount collected and deposits made intact, in accordance with provisions of the Montana Administrative Manual.

Several divisions do not place restrictive endorsements on checks at the time of their receipt as required by the Montana Administrative Manual, Chapter 2-1200. Such endorsements are essential to preclude use of checks for any purpose other than deposit in the state treasury. The lack of restrictive endorsements becomes even more critical because the department does not make deposits frequently. We noted that checks and cash were held unnecessarily long periods before depositing to the state treasury. For example, Milk Control Division records show receipts of \$8,476 have been held up to 21 days before deposit. Records in other divisions were not adequate to show when the checks were received; however, the deposits were comprised of numerous checks. We observed that in one division deposits were made about twice monthly, while in others the time lag between deposits was up to 14 days. We were advised that normally a deposit is made each week. The reason for providing timely deposit of cash and checks is to reduce the possibility of theft or other loss and permit more timely investment of state moneys.

Potential loss of these receipts is further enhanced by the rather extensive access to the safe which the department used primarily for undeposited checks. At least six department employees have access to the safe. The Montana Administrative Manual, Section 2-1210.26, specifies that

two persons should be sufficient for access to devices where moneys are stored and that a record be maintained of those persons. The combination to the safe has not been changed for at least 10 years, although employees having knowledge of the combination have since terminated.

RECOMMENDATION

We recommend that the department implement a system of internal control over cash collections consistent with the guidelines set forth in the Montana Administrative Manual.

Disposition of Assessments

Statutory language for disposition of assessments generated from operations of the Milk Control Division are conflicting in several areas. The Milk Control Division is financed entirely from earmarked revenue obtained by assessment of milk producers and distributors. Certain revenue resulting from licensing and assessment of civil penalties is required to be deposited in the General Fund, while fines levied by any court must be deposited in the Earmarked Revenue Fund.

Our review of the disposition of revenue disclosed that several sections of state law direct the disposition of moneys generated by operation of the Milk Control Division. Section 27-409, R.C.M. 1947, provides that revenue derived from licenses issued by the board be deposited in the General Fund, while assessments to administer and enforce the act will be deposited to the Earmarked Revenue Fund. Section 27-411, R.C.M. 1947, provides that in lieu of suspension or revocation of licenses, the board may assess a civil penalty. The statute further provides that any moneys received as a result of collection of civil penalties is to be deposited to the General Fund.

In contrast, Section 27-417, R.C.M. 1947, provides that the disposition of all fines assessed in any court for violation of the Milk Control Act

shall be placed in the Earmarked Revenue Fund. This section appears to be in direct conflict with the language of Section 27-411, R.C.M. 1947. We discussed the possibility of such a conflict with a former legal counsel for the board, and he agreed that a conflict may exist between Sections 27-411 and 27-417, R.C.M. 1947. He suggested that the conflict could be clarified through a legal evaluation and opinion.

RECOMMENDATION

We recommend that the department seek legal clarification of conflicting statutes governing the disposition of revenue derived from licensing and enforcement activities.

TRUSTEE BANK ACCOUNT

As a result of bank failures in the 1930's, the State Examiner (now incorporated within the Department of Business Regulation) became custodian of various bank assets under Section 5-301, R.C.M. 1947, for the purpose of liquidation. Over the years these assets have been liquidated and payments made to bank customers until the assets of only one bank remain today. These assets will eventually be liquidated, but in the meantime produce revenue which is in the custody of a bank rather than the state. Under state law, the department is responsible for the assets and periodically makes distribution of the proceeds to customers of the liquidated bank. The nature of these transactions is depicted in Exhibit "F" on page 28.

The assets are deposited in a bank account in the department's name, pursuant to a law enacted in 1927, Section 5-1116, which reads as follows:

"All funds in the hands of the superintendent belonging to any bank in process of liquidation shall be deposited in his name as superintendent in such banks within the state as may be selected and designated by him and subject to his checks as superintendent of banks. Said funds to be preferred and protected as in this act provided."

In 1963 the Treasury Fund Structure Act (Title 79, Chapter 4) was passed. The Act established accounting entities (funds) within the state treasury to account for all moneys under the control of state agencies. One of the funds established, the Agency Fund, was specifically created to account for moneys held in trust subject to refund. Accordingly, this fund could be used by the department to account for the trustee moneys it is responsible for.

Inasmuch as the custody of and distribution of the assets are part of a statutory function exercised by the department, the transactions should be accounted for within the statewide budgeting and accounting system. This could be readily accomplished by depositing the current trust balance and future trust collections in the state treasury, and making payments through the claim-warrant process. If the department officials determine that this action conflicts with the provisions of the Bank Act, legislation should be requested to amend the act to recognize the provisions of the Treasury Fund Structure Act.

RECOMMENDATION

We recommend that the bank assets administered by the department as trustee be deposited in the state treasury and accounted for through the statewide budgeting and accounting system.

CONCLUSION

We have reviewed the comments and recommendations contained in this report with the director of the Department of Business Regulation. The cooperation and assistance provided to us by him and other department personnel is sincerely appreciated.

Respectfully submitted,

Morris L. Brusett

Morris L. Brusett
Legislative Auditor

September 21, 1973

DEPARTMENT OF BUSINESS REGULATION

ALL FUNDS

BALANCE SHEET
June 30, 1972

				Trustee Account Held Outside State Treasury
		Federal and Private Revenue Fund	Revolving Fund	
<u>ASSETS</u>				
Cash in State Treasury	\$ --	\$48,842	\$1,254	\$4,256
Cash in Bank	--	--	--	--
Investments (Certificates of Deposit)	--	--	--	--
Encumbered Appropriation	<u>21,443</u>	<u>--</u>	<u>--</u>	<u>--</u>
TOTAL ASSETS	<u>\$21,443</u>	<u>\$48,842</u>	<u>\$1,254</u>	<u>\$4,256</u>
<u>LIABILITIES, RESERVES, AND FUND BALANCE</u>				
Accrued Liabilities	\$21,443	\$ 2,890	\$ --	\$ --
Outstanding Dividends	--	--	--	--
Reserve for Trust Accountability, Exhibit "F"	--	--	--	--
Fund Balance, Exhibit "B"	--	<u>45,952</u>	<u>1,254</u>	<u>4,256</u>
TOTAL LIABILITIES, RESERVES, AND FUND BALANCE	<u>\$21,443</u>	<u>\$48,842</u>	<u>\$1,254</u>	<u>\$4,256</u>
				<u>\$35,018</u>

DEPARTMENT OF BUSINESS REGULATION
ALL FUNDS
STATEMENT OF CHANGES IN FUND BALANCE
Fiscal Year Ended June 30, 1972

	General Fund	Earmarked Revenue Fund (Ex. B-1)	Federal and Private Revenue Fund	Revolving Fund
Fund Balance, July 1, 1971	\$ --	\$ 60,956	\$ --	\$26,580
Additions:				
1971-72 Appropriation	691,457	--	--	--
1971-72 Supplemental Approp.	6,700	--	--	--
Revenue - Exhibit "C"	294,422	141,429	18,179	10,750
Reserve for Encumbrances, July 1, 1971	<u>2,251</u>	<u>--</u>	<u>--</u>	<u>--</u>
Total Balance and Additions	994,830	202,385	18,179	37,330
Deductions:				
Expenditures - Exhibit "D"	650,905	138,294	16,925	6,494
Transfer to General Fund	--	18,139	--	26,580
Revenue Deposited to General Fund	294,422	--	--	--
Reversions	<u>49,503</u>	<u>--</u>	<u>--</u>	<u>--</u>
Fund Balance, June 30, 1972	<u>\$ --</u>	<u>\$ 45,952</u>	<u>\$ 1,254</u>	<u>\$ 4,256</u>

DEPARTMENT OF BUSINESS REGULATION
EARMARKED REVENUE FUND
STATEMENT OF CHANGES IN FUND BALANCE
Fiscal Year Ended June 30, 1972

	<u>State Examiner Account</u>	<u>Trade Regulation Account</u>	<u>Milk Control Account</u>	<u>Total</u>
Fund Balance, July 1, 1971	\$18,139	\$ 5,741	\$ 37,076	\$ 60,956
Additions:				
Revenue - Exhibit "C"	--	<u>23,346</u>	<u>118,083</u>	<u>141,429</u>
Total Balance and Additions	18,139	29,087	155,159	202,385
Deductions:				
Expenditures - Exhibit "D"	--	21,982	116,312	138,294
Transfer to General Fund	<u>18,139</u>	--	--	<u>18,139</u>
Fund Balance, June 30, 1972	<u>\$ --</u>	<u>\$ 7,105</u>	<u>\$ 38,847</u>	<u>\$ 45,952</u>

DEPARTMENT OF BUSINESS REGULATIONALL FUNDSSTATEMENT OF REVENUE

Fiscal Year Ended June 30, 1972

	<u>General Fund</u>	<u>Earmarked Revenue Fund</u>	<u>Federal and Private Revenue Fund</u>	<u>Revolving Fund</u>	<u>Total</u>
State Examiner Program:					
Examination Fees	\$223,089	\$ --	\$ --	\$ --	\$223,089
Federal Grant (Emergency Employment Act)	--	--	10,778	--	10,778
Refunds	1,354	--	--	--	1,354
Trade Regulation Program:					
License Fees	--	23,346	--	--	23,346
Milk Control Program:					
Assessments on Milk Sales	--	118,083	--	--	118,083
License Fees	964	--	--	--	964
Fines	1,500	--	--	--	1,500
Weights and Measures Program:					
Scale Inspection Fees	33,504	--	--	10,750	44,254
Petroleum Licenses	34,011	--	--	--	34,011
Federal Grant (Emergency Employment Act)	--	--	7,401	--	7,401
TOTAL	<u><u>\$294,422</u></u>	<u><u>\$141,429</u></u>	<u><u>\$18,179</u></u>	<u><u>\$10,750</u></u>	<u><u>\$464,780</u></u>

DEPARTMENT OF BUSINESS REGULATION
ALL FUNDS
STATEMENT OF EXPENDITURES COMPARED WITH APPROPRIATIONS
Fiscal Year Ended June 30, 1972

	<u>Reserve for Encumbrances</u>	<u>1971-72 Appropriation</u>	<u>Budget Amendment</u>	<u>Total Available</u>	<u>Expenditures</u>	<u>Reverted</u>
<u>General Fund</u>						
Supervision and Examination Program	\$1,698	\$558,209	\$ (15,249)	\$544,658	\$505,717	\$38,941
Local Accounting Assistance Program	—	14,400	—	14,400	11,808	2,592
Weights and Measures Program	553	118,848	(1,649)	117,752	110,283	7,469
Centralized Services Program	—	—	23,598	23,598	23,097	501
Total	\$2,251	\$691,457	\$ 6,700	\$700,408	\$650,905	\$49,503
<u>Earmarked Revenue Fund</u>						
<u>Milk Control Account:</u>						
Price Regulation of Milk	\$ 423	\$133,500	\$ (12,660)	\$121,263	\$105,736	\$15,527
Industry Program	—	—	12,660	12,660	10,576	2,084
Centralized Services Program	—	—	—	—	—	—
Total Milk Control Account	\$ 423	133,500	—	133,923	116,312	17,611
<u>Trade Regulation Account:</u>						
Licensing and Regulation Program	—	26,104	(3,475)	22,629	20,606	2,023
Centralized Services Program	—	—	3,475	3,475	1,376	2,099
Total Trade Regulation Account	—	26,104	—	26,104	21,982	4,122
Total	\$ 423	\$159,604	\$ —	\$160,027	\$138,294	\$21,733
<u>Federal and Private Revenue Fund</u>						
Weights and Measures Program	\$ —	\$ —	\$ 11,300	\$ 11,300	\$ 10,356	\$ 944
Supervision and Examination Program	—	—	15,232	15,232	6,569	8,663
Total	\$ —	\$ —	\$ 26,532	\$ 26,532	\$ 16,925	\$ 9,607
<u>Revolving Fund</u>						
Weights and Measures Program	\$ —	\$ —	\$ —	\$ —	\$ 7,000	\$ 506

DEPARTMENT OF BUSINESS REGULATION
ALL FUNDS
STATEMENT OF EXPENDITURES
Fiscal Year Ended June 30, 1972

	Centralized Services	State Examiner	Trade Regulation	Program		Milk Control	Total
				Weights and Measures			
Personal Services:							
Salaries	\$28,246	\$360,487	\$ 9,756	\$ 70,933	\$ 63,056	\$532,478	
Employee Benefits	<u>3,109</u>	<u>36,034</u>	<u>1,044</u>	<u>8,685</u>	<u>6,316</u>	<u>55,188</u>	
Total	<u>31,355</u>	<u>396,521</u>	<u>10,800</u>	<u>79,618</u>	<u>69,372</u>	<u>587,666</u>	
Operating Expenses:							
Contracted Services	22	2,448	3,495	1,585	9,523	17,073	
Supplies and Materials	67	4,388	238	3,898	1,119	9,710	
Communication	239	3,445	938	1,479	1,935	8,036	
Travel	154	108,976	3,918	29,481	17,868	160,397	
Rent	1,760	5,720	1,225	3,806	2,781	15,292	
Repairs and Maintenance	--	1,302	17	625	1,341	3,285	
Utilities	--	--	5	867	--	872	
Other	<u>34</u>	<u>814</u>	<u>60</u>	<u>49</u>	<u>115</u>	<u>1,072</u>	
Total	<u>2,276</u>	<u>127,093</u>	<u>9,896</u>	<u>41,790</u>	<u>34,682</u>	<u>215,737</u>	
Equipment							
Total	<u>\$34,397</u>	<u>\$526,700</u>	<u>\$20,696</u>	<u>\$125,080</u>	<u>\$105,745</u>	<u>\$812,618</u>	

DEPARTMENT OF BUSINESS REGULATION
TRUSTEE BANK ACCOUNT
STATEMENT OF CHANGES IN RESERVE FOR TRUST ACCOUNTABILITY
Fiscal Year Ended June 30, 1972

Balance July 1, 1971 \$ 6,598

Revenue:

Oil and Gas Royalties	\$17,069
Interest	1,210
Rent	<u>100</u> <u>18,379</u>
Total Available	24,977

Expenditures:

Property Taxes	\$ 17
Dividends	17,537
Supplies	<u>2</u> <u>17,556</u>
Balance, June 30, 1972	<u>\$ 7,421</u>

AGENCY REPLY



STATE OF MONTANA

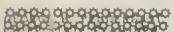
DEPARTMENT OF BUSINESS REGULATION

HAROLD PITTS, DIRECTOR

805 NORTH MAIN, HELENA, MONTANA 59601

TELEPHONE 449-3163

FINANCIAL DIVISION
L. W. ALKE, ADMINISTRATOR



TRADE REGULATION DIVISION
DAN L. RICE, ADMINISTRATOR

MILK CONTROL DIVISION
K. M. KELLY, ADMINISTRATOR
WEIGHTS AND MEASURES DIVISION
GARY DELANO, ADMINISTRATOR
CENTRALIZED SERVICES DIVISION
DICK DISNEY, ADMINISTRATOR

September 21, 1973

RECEIVED

SEP 24 1973

Mr. Morris L. Brusett
Legislative Auditor
Montana State Capitol
Helena, Montana 59601

MONTANA LEGISLATIVE AUDITOR

Dear Mr. Brusett:

As requested in your letter to us of September 11, 1973 as a Department, we have reviewed your examination through the fiscal year ending June 30, 1972. You have requested a reply to each of the Recommendations, and while I am happy to do this and intend to keep the comments as brief as possible, nevertheless it might be necessary in some instances to refer back to the information in your examination that leads to your recommendations. In order to have a proper sequence I will refer at the start of each paragraph to a certain numbered page of your examination, and in this manner I believe everyone can follow the response without difficulty.

RECOMMENDATION on page 6. In our preliminary discussions with you we informed you that this matter had been discussed with the budget bureau and they advised us it would not be practical to handle the distribution as you suggested. While I was not personally involved in the discussion, nevertheless, competent people from our Department consulted with the Budget Bureau Director and some of his people. One contributing factor to the Budget Bureau's decision was the fact that we operate both with ear-marked revenue as well as general funds. As you recall two of our divisions operate on ear-marked revenue funds and the other three divisions on general funds. As long as in the end each division is paying its proportionate share and in view of the Budget Bureau's recommendations for the time being at least we would prefer continuing as we are.

RECOMMENDATION on page 7. Apparently some of your people discussed with the lessor of our building the supposed overcharge on 150 square feet, primarily covering an entry-way and hallway that provided access to offices other than ours. Our office to date has not discussed this with the landlord, but we will and if there is an adjustment due, we will pursue the matter and try and bring it to a successful conclusion.

Mr. Brusett

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September 21, 1973

RECOMMENDATION on page 8. Our Centralized Service Division does review all travel claims. Before these claims are turned over to Centralized Service, the administrator of each division approves and certifies that the claim is just and was used for a proper travel purpose.

RECOMMENDATION on page 9. I have discussed in detail with each division administrator and unanimously they are against having the state of Montana advance funds for traveling. It is believed that a substantial amount of additional work would be involved in keeping track of the advances when approximately 50 percent of our entire Department are on the road constantly. The use of personal funds for traveling has never been a problem; however, at some future time if it does become a problem, then perhaps we could resort to requesting funds for our employees to travel on. We have never had a complaint from the Accounting Department on the frequency of submitting travel claims. I presume the cost of issuing a warrant is a factor and perhaps some policy should be established as to the frequency that travel should or could be submitted.

RECOMMENDATION on page 11. There are three parts to this recommendation. Under number 1 we will be more than happy to comply as recommended. Under number 2 we could get into a long dissertation, but as it would solve nothing we have, with the permission of the employee involved, corrected the leave records eliminating the sick leave earned prior to an earlier termination. Under number 3 we will comply with the Department of Administration's prescribed procedures.

RECOMMENDATION on page 13. Due to the size of our Centralized Service Division, it is impossible to have more than one employee involved in certain procedures. We realize, however, there is a certain degree of exposure and so in order to qualify with the minimum suggested in the audit, I will personally from time to time have the payroll warrants delivered to me and will either distribute them myself or have one of my administrators do it.

RECOMMENDATION on page 14. Under the first recommendation please be advised that we use the procedure recommended by the Department of Administration. Presumably this should be sufficient. Under the second portion, please be advised that we are using the prescribed guidance and procedure as recommended by the Department of Administration.

RECOMMENDATION on page 15. There are three portions to this recommendation. In accordance with number 1, we have determined the number of travel orders necessary for current needs. Under number 2 we collected all of the outstanding travel purchase orders and returned them to the Department of Administration and have received a receipt from them. Answering number 3, please be advised that we have received from the Department of Administration one new travel purchase order book and this is being controlled by Centralized Services and it is kept under lock and key.

Mr. Brusett
Page 3
September 21, 1973

RECOMMENDATION on page 16. We have established a card system inventory and this is handled by Centralized Service. Please be advised that our inventory is completely current.

RECOMMENDATION on page 17. There are three parts to this recommendation. Under A our Centralized Service Division is too small to separate duties as recommended. Without increasing our staff for which we have no money, if someone can devise a plan where our two employees in Centralized Service can handle the duties other than like present we would be more than happy to cooperate. Under item B the Weights and Measures Division is in the process of computerizing their accounts receivable and this will eliminate the responsibility of our collecting the license fees. There is no way the Milk Control Division can bill in advance, because there is no way to determine the amount of milk being produced until it actually has been produced. We cannot bill and collect until reports have been received furnishing us with exact production figures including the quality of production. Likewise we cannot bill banks in advance for examinations and so examination fees are collected by the examiners at the time of the examination. In other words wherever we can comply with item B we will be happy to do so, but circumstances beyond our control prohibit us from doing this 100 percent. Under item C we do follow up past-due accounts. Where we are unsuccessful, we turn them over to the Department of Administration for collection.

RECOMMENDATION on page 19. I understand the Montana Administrative manual and its various chapters did not become effective until July 1, 1972, whereas this audit ended June 30, 1972. Another thing that should be pointed out is that the money we collect in this Department is in the form of checks made payable to the Department. By January 1, 1974 there will be only two Departments handling money, one being the Financial Division and the other, the Milk Control Division. We are now in the process of developing a system that will give proper control over collections handled in the Department. Again we do not have enough personnel to separate all duties and responsibilities and, therefore, have to work out the system that will give as much protection as possible and at the same time, make it possible for our present personnel to handle it. We just about have the details worked out and if all goes well, by October 1, 1973 we will have developed and put into practice a plan we feel will be totally acceptable.

RECOMMENDATION on page 20. We do not believe there is any necessity of seeking legal clarification of the points at issue, because we believe the statutes are clear. There are really 3 statutes governing the handling of funds in question. 27-409 entitled "Licenses--Disposition of Income" goes on to state "all assessments herein before required to be paid shall be deposited by the Milk Control Board in the ear-marked revenue fund." Section 27-411 pertaining to suspending and revoking licenses and penalties pertaining thereto again clearly states "any monies received by the board as a result of collections of civil penalties shall be paid into the state general fund." Under section 27-417 entitled "Disposition of Fines" it again states "all fines received by the board shall be deposited with the State Treasurer and shall be placed by him in the ear-marked revenue fund." We have consulted with Mr. Geoffrey Brazier who has been the attorney for the Milk Control Division for many years,

Mr. Brusett

Page 4

September 21, 1973

and he does not see any conflict or a necessity for a legal clarification from the Attorney General's office.

RECOMMENDATION on page 21. I think there is one mis-quotation in that, you indicate the present revenue "is in the custody of a bank rather than the state." The money is in custody of this Department, but of course is deposited in a bank. The bank does not have any control whatsoever over the funds any more than it does other deposits. Your report on this subject indicates there perhaps is a conflict of laws. We have been and we are continuing to operate under the law enacted in 1927 under section 5-1116 which apparently was not repealed or changed in any way when the Treasury Fund Structure Act (Title 79, Chapter 4) was passed in 1963. In view of this we feel we are bound to continue as we are. As a side note we might mention in the future, our Department will not be called upon for the handling of bank liquidations. Every state-chartered bank in Montana is properly insured by the Federal Deposit Insurance Corporation and if there are any bank failures, this arm of the federal government would handle the liquidation. We have been handling this one remaining liquidation for approximately 30 years and our present calculations indicate the final liquidation will come in about six years. I believe the audit indicates this special trust fund has been handled in an orderly and business-like manner. For reasons mentioned it is our recommendation we continue operating as we have been, firmly believing it would take an act of the legislature to make possible a change. As there is only this one account and as mentioned before the Department again will never be put in this position, we do not believe it necessary and we have no intention of asking the legislature to repeal Section 5-1116.

The above concludes my remarks to the specific recommendations noted in the examination. Your covering letter of September 11 indicated you preferred this type of response; however, I am going to take the liberty of making a statement or two. As noted, this Department was created under Executive Reorganization on November 15, 1971 which means the examination covers the first 7½ months of operation of a newly-created Department. I was not in state government during this time, but I have made an investigation that leads me to believe there was a certain amount of confusion in putting the Department together and as could be expected. It is my opinion that the former Director, as well as the administrators, all worked within the best interests of the state of Montana in setting up the Department. Because of this I believe we could properly take an exception to many statements in the examination that I believe are unduly critical. I see no point in going into great detail as it would not accomplish a single thing. Fortunately this Department understands the role of an examiner, primarily because we are heavily involved in this type of work ourselves.

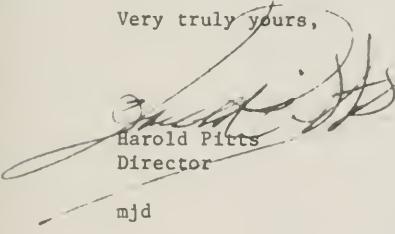
You have my personal assurance that it is the intention of this Department to operate within the state law to the best of our ability. You must remember, however, that finances do enter into the broad picture of operating in state government. As I understand it the Department was created within about the

Mr. Brusett
Page 5
September 21, 1973

middle of a two-year budget period, and because of this some improvising was necessary in order to get by until a new budget on the Department as a whole could be submitted. I further understand that the Department was told back in July 1972 that the present budget was being prepared and it was to be absolutely a "bare-bones" budget. We are now living with this and will until July 1, 1975. When we next submit a budget I am going to attempt to get sufficient funds that will permit us to have a Centralized Services of sufficient size that we can take care of your recommendations and suggestions. In the meantime we are going to do everything we possibly can to run the Department in a business-like manner and make it a credit to the state of Montana.

One closing thought and that is I believe with all my heart, it would be in the best interest of all concerned if when you start an examination, you would stay with it and get it over with. Work on this examination by your Department has been over a period of about 10 months and to say the least at times it has been very disrupting. At times your men were in for a few minutes, at other times for a few hours, other times for a few days, and then again there would be one man working alone with others being involved from time to time. Also during this period your examiners called here on many, many occasions for information. I think you would readily agree it would be better if you would put a crew in the Department and make the examination in the shortest possible time. This would not only be less disrupting to our people, but also it would give us the information a lot faster, so whatever corrections are necessary could be made immediately. This is in the line of a constructive criticism and I hope will be accepted in the spirit it is being given.

Very truly yours,


Harold Pitts
Director

mjd



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION

HELENA 59601

September 14, 1973

RECEIVED

SFP 14 1973

MONTANA LEGISLATIVE AUDITOR

Mr. Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

In response to your request of September 11, 1973, the following is the Department of Administration's reply to recommendations included in the audit report on the Department of Business Regulation.

Page 11: Recommendation

3. The Department of Administration prescribe procedures for the granting and documentation of authorized leaves of absence.

The Department is in the process of compiling the section of the Montana Administrative Manual setting forth policies and procedures on leave. This section will be distributed in about 60 to 90 days and will contain provisions for administering leaves of absence.

Page 14: Recommendation

2. The Department of Administration prescribe guidance and procedures for use by State agencies in the area of time and attendance documentation.

We agree with the general intent of this recommendation. However, the degree of uniformity that may be attained in this area is impossible to predict at this time. The Statewide Budgeting and Accounting System has been designed to account for the payment of various types of pay such as vacation, sick leave, etc. It is our opinion the Central Payroll System should provide for an accounting of leave accumulated

Mr. Morris L. Brusett
September 14, 1973
Page 2

and used. This will require a major revision of the system. The Department has taken action to get this project under way. Time and attendance reporting procedures will, of necessity, be an integral part of such a system.

Very truly yours,

Jack C. Crosser
JACK C. CROSSER
Deputy Director

JCC:bc

